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6 **Attorney for Defendant:**  
7 **KENNETH MARTIN KYLE**

8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 **UNITED STATES OF AMERICA** )

12 **Plaintiff,** )

13 **- against -** )

14 **KENNETH MARTIN KYLE** )

15 **Defendant.** )

**CASE NO. CR 10 0245 JSW**

**JOINT STATUS CONFERENCE  
STATEMENT AND PROPOSED  
BRIEFING SCHEDULE**

16  
17 **BACKGROUND**

18 This matter began by an internet investigation by the FBI out of Virginia.  
19 The FBI located what are claimed to be images of child pornography in Mr. Kyle's  
20 home computer. The FBI, in turn, provided this information to the San Francisco Police  
21 Department.

22 On March 10, 2010 the San Francisco Police Department conducted a search  
23 of Mr. Kyle's residence pursuant to a warrant. They seized computer evidence as well  
24 as a body of digital storage material.

25 Mr. Kyle was out of the country on March 10, 2010.

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1 The San Francisco Police Department shared the above information with the  
2 Federal authorities.

3 On March 15, 2010, Mr. Kyle returned to the United States from Europe.  
4 He entered at San Francisco International Airport.

5 Customs agents seized Mr. Kyle's notebook computer, as well as a cell phone.  
6 They searched these things without a warrant. They found things that are claimed to be  
7 child pornography. Mr. Kyle was arrested.

8 The search of the computer and cell phone led to an investigation of events  
9 alleged to have occurred in St. Louis County, Missouri.

10 This investigation is the basis of Count One on the indictment.

11 On April 16, 2010, Federal agents searched Mr. Kyle's apartment in San  
12 Francisco pursuant to a warrant. They seized a computer, sex toys, a camera, and travel  
13 and financial documents.

14  
15 DISCOVERY ISSUES

16 The following is a general description of the discovery to be completed:

17 1. Examination of the computerized information in possession of the  
18 government. This examination was scheduled for August 12, 2010. Mr. Bigeleisen  
19 was called away suddenly to attend the funeral of his father. The examination has been  
20 re-scheduled to August 31, 2010.

21 2. Sex toys, camera and travel documents. The government has stated that  
22 it seeks to have the sex toys tested to see if there is DNA evidence to link them to sexual  
23 offences upon a minor victim. The camera is claimed to be linked to other evidence  
24 which was seized in the investigation.

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1           3. Evidence gathered by Missouri authorities. The authorities in St. Louis  
2 County, Missouri have conducted their independent investigation. Defense counsel  
3 believes that this information is available to the United States and has requested it.

4           The United States is negotiating with Missouri local authorities for their  
5 investigative information – beyond what has already been produced – but as this is not a  
6 joint task force investigation, the United States has no means to compel the Missouri  
7 local authorities' cooperation and does not believe that it has a legal obligation to  
8 produce this material. *United States v. Fort*, 472 F.3d 1106, 1110-18 (9th Cir. 2007).

9           4. Exculpatory evidence. Discovery already provided suggests physical  
10 injury to a minor victim. Counsel for the government has indicated that there is further  
11 evidence that the reported injury could not have been caused by Mr. Kyle.

12           The United States does not have access to medical records for the minor  
13 victim, but does not believe that such evidence is exculpatory in any event.

14           5. Identity of witnesses. The government has not provided the identity of  
15 the witnesses who initiated the internet search of Mr. Kyle's computers. The  
16 government may resist disclosure claiming that the identity of these witnesses will  
17 jeopardize ongoing investigations. The defense claims that these witnesses and their  
18 testimonies may be critical to the validity of the initial internet search of Mr. Kyle's  
19 computer, as well as the subsequent searches.

20           The United States has withheld the true name of the undercover agent who  
21 received child pornography from the defendant due to that individual's continued  
22 involvement in similar undercover investigations, but the United States will comply  
23 with its discovery obligations should that individual testify at trial.



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1 PARALLEL PROCEEDINGS

2 Mr. Kyle faces charges in the following parallel proceedings:

3 1. Superior Court, San Francisco County for possession and distribution of  
4 child pornography.

5 2. St. Louis County, Missouri for promotion child pornography, statutory  
6 rape, statutory sodomy and incest.

7 3. United States District Court for the Eastern District of Missouri.  
8 Interstate travel to commit a lewd act on a minor under the age of 12.

9 Mr. Kyle has not been arraigned in any of the parallel proceedings.

11 PROPOSED DISCOVERY SCHEDULE

12 Completion of informal discovery: 9/20/10

13 If defense counsel does not believe that informal discovery is adequate, he  
14 shall file his moving papers on or before 10/4/10.

15 Government to respond to defense discovery motion: 10/18/10

16 Defendant's reply: 10/25/10

17 Hearing on discovery motion: 10/28/10

18 If counsel believe that informal discovery is adequate, they will notify the  
19 Court on or before 10/4/10.

21 MOTIONS TO SUPPRESS

22 A briefing schedule on motions to suppress will be provided upon resolution  
23 of discovery issues.

24 If counsel are able to complete discovery without submission to the Court,  
25 then the following briefing schedule on a motion to suppress is proposed:  
26

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1 Defendant's initial moving papers: 10/4/10  
2 Government response: 10/18/10  
3 Defendant's reply: 10/25/10  
4 Hearing on motion to suppress: 10/28/10  
5  
6  
7

8 Date:

OWEN MARTIKAN  
Assistant United States Attorney

11 Date: 8/30/2010

  
DAVID MICHAEL BIGELEISEN  
Attorney for Defendant:  
KENNETH MARTIN KYLE